

CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza
New York, NY 10006-1470

T: +1 212 225 2000

F: +1 212 225 3999

clearygottlieb.com

WASHINGTON, D.C. • PARIS • BRUSSELS • LONDON • MOSCOW
FRANKFURT • COLOGNE • ROME • MILAN • HONG KONG
BEIJING • BUENOS AIRES • SÃO PAULO • ABU DHABI • SEOUL

D: +1 212-225-2086
jrosenthal@cgsh.com

THOMAS J. MOLONEY
STEVEN M. LOEB
CRAIG B. BROD
NICOLAS GRABAR
HOWARD S. ZELBO
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SHIRLEY M. LO
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SUSANNA E. PARKER
DAVID W.S. YUDIN
RESIDENT COUNSEL
LOUISE M. PARENT
OF COUNSEL

July 7, 2020

VIA ECF

The Honorable Ona T. Wang
United States District Court for the Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

Re: *In re Application of Vale S.A., Vale Holdings B.V., and Vale International S.A. for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings*, No. 20-mc-199-JGK-OTW

Dear Judge Wang:

We write on behalf of Vale S.A., Vale Holdings B.V., and Vale International S.A. (collectively, “Vale”), the petitioners in the above-captioned application to conduct discovery for use in foreign proceedings pursuant to 28 U.S.C. § 1782 (the “Application”), to advise the Court of upcoming developments in the underlying foreign proceedings relevant to the Application (the “English Proceedings”).

As the Court is aware, Vale filed the Application *ex parte* on April 24, 2020. The Application received substantial media attention and Respondent Fine Arts LLC (“Fine Arts”) filed an objection on May 8, 2020. ECF Nos. 12-15. Shortly thereafter, Vale served all Respondents as well as all Defendants in the English Proceedings, following which Defendant Nysco Management Corporation (“Nysco”) filed an objection and several other Respondents filed a joinder. ECF Nos. 25-26, 32. Briefing on all objections was completed by June 15, 2020 with the filing of Vale’s Reply Memorandum of Law to Nysco’s Opposition (“Vale’s Nysco Reply”). See ECF No. 34.

Hon. Ona T. Wang, p. 2

As discussed in Vale's Nysco Reply, one of the uses of the documents sought in the Application is in connection with the worldwide freezing order ("WFO") entered against all of the Defendants in the English Proceedings. See Vale's Nysco Reply at 1, 8. Concerned about Defendant Beny Steinmetz's compliance with his obligation under the WFO to disclose his assets, Vale applied to cross-examine Mr. Steinmetz regarding his assets and the English Court has now scheduled a hearing on that application for July 24, 2020. As the Court can see from the Application, the overwhelming majority of the document requests are directed to the discovery of assets in which Vale considers Mr. Steinmetz may have an interest.

Assuming that cross-examination of Mr. Steinmetz in the English Proceedings regarding his asset disclosure is ordered, Vale anticipates that it will take place soon after the July 24, 2020 hearing. The documents concerning Mr. Steinmetz that Vale seeks through the pending Application are potentially material to this cross-examination because, *inter alia*, they may give rise to questions that Vale wishes to put to Mr. Steinmetz about his assets. Accordingly, given that there will necessarily be a period of delay between this Court's ruling and Vale's receipt of any documents, we respectfully request that the Court rule promptly such that we will be in a position to receive all documents in time to use them in connection with the anticipated upcoming examination of Mr. Steinmetz. We note that despite being discussed throughout the Application, Mr. Steinmetz has never objected to the Application.

Given potential concerns about the confidentiality of certain aspects of the English Proceedings, we requested the consent of Mr. Steinmetz's counsel to disclose to this Court the existence of Vale's application to cross-examine Mr. Steinmetz in the English Proceedings and the July 24, 2020 court hearing. They provided such consent so long as we also furnished the Court with their letter annexed hereto.

Thank you for Your Honor's consideration. We are, of course, available at the Court's convenience to address any questions or concerns regarding the Application.

Respectfully submitted,



Jeffrey A. Rosenthal

cc: Jennifer Selendy, Esq. (by email)
Altumash Mufti, Esq. (by email)
Josef M. Klazen, Esq. (by email)
Robin Rathmell, Esq. (by email)
Michael Kim, Esq. (by email)
Carolina Leung, Esq. (by email)
Victoria Morris, Esq. (by email)
Andrew Kratenstein, Esq. (by email)
Monica Asher, Esq. (by email)
Frederick Hyman, Esq. (by email)

Annex



Cleary Gottlieb Steen & Hamilton LLP
2 London Wall Place
London
EC2Y 5AU

By email

6 July 2020

Dear Sirs,

Vale S.A. and Others v Steinmetz and Others; Claim No. CL-2019-000723

We refer to your letter dated 2 July 2020.

Our client is not a party to your client's the application pursuant to 28 U.S.C. §1782 dated 24 April 2020 (the "**Discovery Application**"). What you say to Judge Wang regarding the Discovery Application is entirely a matter for your client.

However, we note that your clients have not referred to the Discovery Application or its subject matter in their application in the English Proceedings for an order that our client be cross-examined. Neither have your clients referred to the Discovery Application in their lengthy witness evidence in support of the application. As matters presently stand the Discovery Application and its subject matter are not issues before the English Court.

In the circumstances, we do not understand why the determination of the Discovery Application in New York has any relevance to determination by the English Court of the application which is listed to be heard on 24 July 2020. You have not provided any basis to show that it is relevant.

For the avoidance of doubt our client has no objection to your mentioning the existence of your clients' application for cross-examination and the fact that the application has been listed for 24 July 2020 on the understanding that you will also place this letter before Judge Wang so that our client's position regarding relevance is clear.

Yours faithfully,

A handwritten signature in dark ink that reads "Asserson Law Offices".

ASSERSON LAW OFFICES

Tel Aviv

1 Azrieli Centre, Round Tower, 32nd Floor, 132 Menachem Begin, Tel Aviv, 6701101

+972 (0)3 744 9191

London

Central Court, 25 Southampton Buildings
Holborn, WC2A 1AL

Postal and Administration address:
Churchill House, 137-139 Brent St, NW4 4DJ
+44 (0)203 150 1300

www.asserson.co.uk